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May 15, 2020

Via ECF

Magistrate Judge Roanne L. Mann
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

ABH Nature's Products, Inc. et al v. Supplement Manufacturing Partner, Inc. et. al.
Civil Action No. 1 2:19-cv-05637-LDH-RLM

UPDATED JOINT STATUS REPORT

Dear Magistrate Judge Mann:

I am counsel for Defendants and Counterclaimants and write jointly with counsel for Plaintiffs and Counterdefendants, James F. Murphy, Esq., to provide an updated status report pursuant to Your Honor's minute order dated April 6, 2020.

On April 9, 2020, Defendants'/Counterclaimants' timely served Defendants/Counterclaimants' Responses and Objections to Plaintiffs/Counterdefendants' First and Limited Set of Interrogatories and Requests for the Production of Documents for Purposes of Mediation ("Responses"). Along with the Responses, Defendants/Counterclaimants produced responsive documents.

On April 14, 2020, the parties met with the mediator, William Baker, Esq., by Zoom conference. On or about April 21, 2020, the parties submitted mediation statements. On April 28, 2020, the parties engaged in mediation, however, the mediation was unsuccessful. The parties are no closer to settlement than before the mediation took place, and continue to espouse radically opposed views on the merits of their competing claims and on damages.

Up until and after the mediation, Defendants/Counterclaimants made a number of requests for Plaintiffs/Counterdefendants' ledger books. Following the mediation,

Defendants/Counterclaimants requested these be produced again, and Plaintiffs'/Counterdefendants' declined, arguing that the ABH Nature's and ABH Pharma United States Tax Returns and Financial Statements for the years 2016-2019 that they produced provided the necessary financial information to calculate the income, expenses, profits and losses of Plaintiffs/Counterdefendants.. On April 27, 2020, Defendants/Counterclaimants signaled their intention to file a motion to compel. Shortly after, on April 29, 2020, Plaintiffs/Counterclaimants served their first deficiency notice in response to the Responses. On May 1, 2020, Defendants/Counterclaimants responded to the deficiency notice, clarified certain of their responses, and pledged to produce additional documents, which Defendants/Counterclaimants, in fact, did on May 5, 2020.

On May 1, 2020, Defendants/Counterclaimants filed a Letter Motion to Compel. [ECF – 22]. On May 1, 2020, the Court issued a minute Order deferring ruling and directing Plaintiffs/Counterdefendants to respond. On May 5, 2020, Plaintiffs/Counterdefendants requested to meet and confer concerning Defendants'/Counterclaimants' Responses. Defendants/Counterclaimants agreed to meet and confer about the Responses on May 6. Also on May 5, Plaintiffs/Counterdefendants filed a response and cross letter Motion to Compel. Later the same day, the Court denied without prejudice the Motion to Compel, based largely on Plaintiffs' Counterdefendants' statement that the parties had agreed to meet and confer, but denied the cross motion as procedurally defective. The Court ruled also that any delay on the part of Plaintiffs/Counterdefendants in responding to Defendants'/Counterclaimants' discovery demands did not constitute a waiver of any and all objections to such demands.

On May 6, 2020, the parties met and conferred, concerning all ongoing discovery disputes. During the meet and confer, the parties agreed that:

- Plaintiffs/Counterdefendants would have 2 weeks to produce ABH Nature's and ABH Pharma's ledger books, in Quickbooks or electronic format, if possible, attorney's eyes only;
- SMP Nutra, Inc. ("SMP Nutra") would have two weeks to supplement its production of invoices to include all customer invoices through November 21 – the date that Plaintiffs/Counterdefendants signed a Consent Decree with the Government – attorneys' eyes only;
- SMP Nutra would have two weeks to make a final decision on Plaintiffs'/Counterdefendants' demand for the production of its ledger books, financials and tax returns;
- Defendants/Counterclaimants agreed to forbear their demands for bank records, credit card statements, customer invoices, proof of expenses, and other financial documents, until Plaintiffs/Counterdefendants produce their financial ledger books;
- Both parties reserved all rights with respect to requested discovery;
- Neither party would make a motion to compel until May 20; and
- The parties agreed to meet and confer again on May 20.
- The parties also agreed to take the necessary steps to transfer the <ABHPharma.com> and <ABHNature.com> domain names to Plaintiffs/Counterdefendants.

Areas of Disagreement

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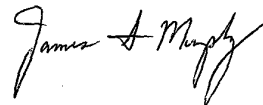
Defendants/Counterclaimants: During the meet and confer call, Plaintiffs/Counterdefendants agreed to produce any other requested documents that are not unduly burdensome within the two-week period. These included eight requests for non-financial documents that Plaintiffs/Counterdefendants had agreed to produce, without specific objections. After the call, Plaintiffs/Counterdefendants took the position that they had not agreed to produce these documents, despite having done so, and despite the absence of any objection to their production or valid basis for withholding them.

Plaintiffs/Counterdefendants: Plaintiffs/Counterdefendants deny having agreed to produce these additional categories of documents within the two week period subsequent to the meet and confer but stand ready to discuss the production of specific responsive non-financial information requested by Defendants /Counterclaimants during the meet and confer scheduled on May 20.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Brett E. Lewis".

Brett E. Lewis, Esq.
LEWIS & LIN LLC
*Counsel for Defendants and
Counterclaimants*

A handwritten signature in black ink, appearing to read "James F. Murphy".

James F. Murphy, Esq.
LEWIS JOHS AVALLONE AVILES, LLP
*Counsel for Plaintiffs and
Counterdefendants*